



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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CITY ATTORNEY SETS RECORD STRAIGHT OVER HIS ROLE IN RESPONDING TO THE MT. SOLEDAD INCIDENT, ASKS MAYOR'S OFFICE TO STOP POLITICIZING THE TRAGEDY

San Diego, CA—City Attorney Michael Aguirre responded today to City officials who politicized last Wednesday's tragedy on Mt. Soledad by misrepresenting statements the City Attorney made at the scene. At the time, Aguirre had called for facts to be gathered to determine whether or not a series of water leaks caused or contributed to the landslide.

"The Mayor's political spin machine purposely made me the target of this tragedy in an attempt to provide cover for the Mayor's lack of leadership in addressing leaking water pipes in the Mt. Soledad area that his office had known about for three months," said City Attorney Aguirre. "My position has always been to gather the facts and provide those facts to the public."

Aguirre added, "After returning to San Diego from a lobbying trip to Washington D.C., the Mayor arrived on the scene and immediately proclaimed that the City was not liable—even though the gathering of evidence had only begun."

The Mayor back tracked the very next day at a special session of the San Diego City Council. While seeking a declaration of a state of emergency for the City of San Diego, the Mayor took his own advice and asked everyone to not pass judgment on the City's potential liability.

Today, the City Attorney requested that the Mayor's Office release publicly documents related to the City's response to water leaks in the Mt. Soledad area.

At this morning's news conference, the City Attorney also chided the Mayor for requesting that the City Council hire outside legal counsel to handle any litigation over the Mt. Soledad incident. Yesterday the City Council voted to support the Mayor although Aguirre stated it would be a violation of the City Charter. The City's Constitution places the responsibility of hiring outside legal counsel and representing the City in all legal matters with the City Attorney.

"San Diego voters determine who their City Attorney is. The Mayor and City Council cannot unilaterally relieve me of my duty," said City Attorney Aguirre. "It would be just like me asking for an outside-Mayor
(MORE)"

to perform the duties of Mayor Sanders because I don't like the leadership or decisions that he has made."

Nevertheless, the City Attorney said he would work cooperatively with any law firm because by law he cannot step aside.

The City Attorney also addressed the inconsistencies that were reported by the Mayor's Office and the press in connection to last week's incident on Mt. Soledad. Here are the facts:

- **Monday, October 1, 2007**

The City Attorney's Office was contacted by the City's Engineering Department asking for an opinion about hiring an expert on an expedited basis. The City Attorney's Office opined they could by-pass the bidding process if they designated the work as an emergency project as permitted by the City's Municipal Code.

The Engineering Department asked Chief Deputy City Attorney Thomas Zeleny of the Public Infrastructure and Resource Restoration Unit to attend a 1 p.m. briefing at the Mayor's office, which included Mayoral aides Fred Sainz and Kris Michell regarding the hiring of experts and the status of the Mt. Soledad area.

- **Tuesday, October 2, 2007**

At 6 p.m., Zeleny received a call from the Engineering Department saying they needed to warn 4 residences that night about sleeping elsewhere because of "soils instability." They read the notice to Zeleny before delivering it to the residences.

- **Wednesday, October 3, 2007**

Zeleny was scheduled to be on Mt Soledad to meet with City Staff while they inspected some of the homes. An attorney for one of the homeowners was expected to be on site. Zeleny arrived minutes after the landslide occurred. Zeleny immediately called City Attorney Michael Aguirre and asked him to join him on location to observe the damage.

The City Attorney arrived on site with Assistant City Attorney Chris Morris. They toured the site. Afterwards they came upon news crews who interviewed the City Attorney.

About a half-hour later, Acting Mayor Jay Goldstone held a news conference with about a dozen city officials, including the Police Chief and Fire Chief. The City Attorney's Office did not receive a call from the Mayor's Office to attend.

The City Attorney continued to view the area with his staff. News media saw him later in the day and asked to speak with him.

Throughout the day, the City Attorney's Office received numerous inquiries from concerned citizens. At about 3:30 p.m., the City Attorney decided to meet with concerned members of the public at the La Jolla Recreation Center at 6 p.m.

(MORE)

About 40-50 Mt. Soledad residents attended. The City Attorney informed them he would post any relevant document that is a public record on the City Attorney's web site. Residents asked to meet with him again the next day. The City Attorney agreed and said he would inform Council member Kevin Faulconer, whose district includes Mt. Soledad.

Once the Mayor arrived from Washington D.C. to the Mt. Soledad incident for his 10 p.m. news conference, neither the City Attorney, nor the City Attorney's office was contacted.

- **Thursday, October 4, 2007**

City Council held a special session at 8:30 a.m. to declare a state of emergency. The City Attorney's Office prepared the resolution and worked with the City's Homeland Security Department to obtain key information related to funding.

The resolution was finalized at 6:30 p.m. and e-mailed to three parties at the request of Mayoral Spokesman Fred Sainz per Assistant City Attorney Kathryn Burton.

Prior to the Special City Council meeting, the City Attorney informed Council member Faulconer that the room at the La Jolla Community Center was reserved and invited the Council member to join him.

- **Friday, October 5, 2007**

The City Attorney attended a court hearing on a temporary restraining order filed against the City by attorneys representing homeowners. The City Attorney and plaintiff's attorneys reached a stipulated agreement:

STIPULATED AGREEMENT BETWEEN THE PARTIES

October 5, 2007

Plaintiff's Attorneys John Schroeder and Patrick Catalano (representing Brian Burke, Michael Burke, Robert Azimi and Soraya Azimi)

City of San Diego

Parties stipulate that its geotechnical and hydrologist experts, in the presence of the City's authorized agent, will be permitted to make reasonable inspection of the Soledad Mountain site upon reasonable notice during working hours (9am to 5pm) or regular business days, beginning Monday 8 October 2007.

Notice will be given to Richard Haas, Director of the City of San Diego's Public Works Department and the San Diego City Attorney's Office via phone and/or email and fax.

Its experts will be permitted to observe the work of the City's experts at the Mt. Soledad site on 6 and 7 October 2007.

Its experts are not to interfere with or dictate the work being performed by the City's experts or any other City Agent during the hours the City's experts are conducting their work.

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Experts will be conducting the inspections at their own personal risk.

As public documents become available, the City Attorney will continue to post them on the City Attorney's web site: www.sandiegocityattorney.org, click NewsWatch and to watch the City Attorney's news conference click *Media Center, Videos*.

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